



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,821	09/19/2001	Michael W. Masters	NC 82185	2379

7590 09/21/2004
Naval Surface Warfare Center
Office of Counsel (Patents) (Code CD222)
17320 Dahlgren Road
Dahlgren, VA 22448-5100

EXAMINER

OSMAN, RAMY M

ART UNIT PAPER NUMBER

2157

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/864,821	MASTERS ET AL.	
	Examiner	Art Unit	
	Ramy M Osman	2157	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☒ Claim(s) 14 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Examiner acknowledges preliminary amendment filed on 9/19/2004, where applicant added new claims 2-48.

Claim Objections

2. Claim 14 objected to because of the following informalities: On line 8 change “,” to “;”.
3. Claim 23 objected to because of the following informalities: On line 2, change “stated” to “started”.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1,2 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant recites “responsive to signals ordering” but fails to explain the role of “signals ordering”. Applicant fails to explain if the signals are sending a command to startup, etc., or if the signals are requesting a startup command, etc..
6. Claim 14 rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicant fails to specify whether “program control software” (on line 2) is located remotely, on the grid or

Art Unit: 2157

on host etc. On lines 6 and 7, applicant fails to specify if it is the program controller or the control agent which "receives one of interactive and automatic...".

7. Claims 23-26 rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Applicant recites "are one of started and stopped simultaneously". This is grammatically incorrect and fails to explicitly point out what is being claimed.

8. Claims 27-29 rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

Applicant recites: "first ones" on line 1, and "second ones" on line 2 of each claim. These limitations are not properly defined and explained in the context of M.

9. Claim 34 rejected under 35 U.S.C. 112, second paragraph, as being indefinite. Applicant states "and host status for that one of the N hosts". This is grammatically incorrect and does not fit properly into the claim.

10. Claim 35 rejected under 35 U.S.C. 112, second paragraph, as being indefinite. "K","L" and "N" have not been defined as to whether they are whole numbers or fractions, and if they are equal in value.

11. Claim 36 rejected under 35 U.S.C. 112, second paragraph, as being indefinite. "K","L","M" and "N" have not been defined as to whether they are whole numbers or fractions, and if they are equal in value.

12. Claim 39 rejected under 35 U.S.C. 112, second paragraph, as being indefinite. "M" and "N" have not been defined as to whether they are variables or integers, whole numbers or fractions, and if they are equal in value.

Art Unit: 2157

13. Claims 1 and 2 recite the limitation "first information" and "second information" in lines 3 and 4. There is insufficient antecedent basis for this limitation in the claim.

14. Claims 8 recite the limitation "first information", "second information" and "third information" on lines 4,5 and 6. There is insufficient antecedent basis for this limitation in the claim.

15. Claim 14 recites the limitation "program control software" on line 2. There is insufficient antecedent basis for this limitation in the claim.

16. Claim 20 recites the limitation "L configuration files" on line 2. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

17. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

18. Claims 2-11 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-11 of copending Application No. 09/864,825. Although the conflicting claims are not identical, they are not patentably distinct from each other because '825 discloses a resource manager generating signals to startup an

Art Unit: 2157

additional copy etc. Whereas the instant application discloses a program device responsive to those generated signals. It is inherent in '825 that a device which generates a signal to be transmitted must include a device which is configured to respond to such a signal. It would have been obvious for one of ordinary skill in the art to include in '825 a device which is responsive to the signal generated by the management device.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims rejected under 35 U.S.C. 103(a) as being unpatentable over Jarriel et al. (US Patent No 6,553,403) in view of Johnson et al (US Patent No 5,987,135).

21. In reference to claims 1,2,8 and 14, Jarriel teaches a managed characteristic application responsive to first information regarding performance and status of all applications including copies of the managed characteristic application and second information regarding performance of the host (Abstract, column 1 line 50 – column 2 line 30, column 4 lines 40-67 and column 7 lines 5-50).

Jarriel fails to explicitly teach a program control device responsive to signals ordering start up of an additional copy of the managed characteristic application or configuration, or

Art Unit: 2157

shutdown of the least one copy of the managed characteristic application. However, Johnson teaches starting, configuring, terminating and removing of at least one copy of an application for the purpose of monitoring and managing applications. (Summary, column 3 lines 30-60 and column 6 lines 25-55)

It would have been obvious for one of ordinary skill in the art to modify Jarriel by starting, configuring, terminating and removing of at least one copy of an application as per the teachings of Johnson for the purpose of monitoring and managing applications.

22. In reference to claims 3,9,27 and 30, Jarriel teaches the program control device as recited in claim 2, wherein the managed characteristic application comprises a scalable application. (column 1 line 50 – column 2 line 30 and column 13 lines 30-60)

23. In reference to claims 4,10,28 and 31, Jarriel teaches the program control device as recited in claim 2, wherein the managed characteristic application comprises a fault tolerant application, where the degree of fault tolerance is selectable by a user. (column 7 lines 5-35)

24. In reference to claims 5,11,29 and 32, Jarriel teaches the program control device as recited in claim 2, wherein the managed characteristic application comprises a selectable priority application. (Summary and column 13 lines 30-60)

25. In reference to claims 6 and 12, Jarriel teaches the program control device as recited in claim 2, wherein the managed characteristic application further responds to user-initiated control actions. (Summary and column 13 lines 30-60)

26. In reference to claims 7 and 13, Jarriel teaches the program control device as recited in claim 2, wherein the program control device modifies the configuration of the managed

Art Unit: 2157

characteristic application responsive to instantaneous tasking by a user. (Summary and column 13 lines 30-60)

27. In reference to claims 15 and 37, Jarriel in view of Johnson teach program control software as recited in claim 14, wherein the specific control orders include one of startup orders permitting instantiation of an $(M+1)$ the managed characteristic application or shutdown and configuration orders permitting a status change regarding one of the M managed characteristic applications. (column 1 lines 5-67, column 4 lines 40-67, column 7 lines 5-50 and column 8 lines 33-67)

Johnson teaches starting, configuring, terminating and removing of at least one copy of an application for the purpose of monitoring and managing applications. (Summary, column 3 lines 30-60 and column 6 lines 25-55)

It would have been obvious for one of ordinary skill in the art to modify Jarriel by starting, configuring, terminating and removing of at least one copy of an application as per the teachings of Johnson for the purpose of monitoring and managing applications.

28. In reference to claim 16, Jarriel teaches the program control software as recited in claim 14, further comprising:

K program control displays permitting interactive control of distributed applications, where K is a positive integer. (column 2 line 45 – column 3 line 67 and figure 1A)

29. In reference to claims 17 and 18, Jarriel teaches program control software as recited in claim 16, wherein the K program control displays depict current status and the configuration of the M managed characteristic applications and of all applications instantiated on the grid system. (column 1 lines 5-67 and column 8 lines 33-67)

Art Unit: 2157

30. In reference to claim 19, Jarriel teaches the program control software as recited in claim 16, wherein each of the K program control displays comprises a graphical user interface (GUI) permitting a user to determine the status of each of the K program control agents and the program controller. (column 2 lines 35-67, column 5 lines 18-30 and column 6 lines 24-54)

31. In reference to claim 20, Jarriel teaches the program control software as recited in claim 16, wherein the K program control displays respond to L configuration files, wherein L is a positive integer. (Summary)

32. In reference to claim 21, Jarriel teaches the program control software as recited in claim 20, each of the K program control displays permits a user to one of create new configuration files and edit an existing one of the L configuration files. (Summary and claims 1-5)

33. In reference to claim 22, Jarriel teaches the program control software as recited in claim 20, wherein selected ones of the L configuration files correspond to predefined scenario configurations. (Summary)

34. In reference to claim 33 and 38, Jarriel teaches the program control software as recited in claim 14, wherein:

each of the N hosts operates in accordance with a selected one of R operating systems; the N program control agents implement the orders via system call mechanisms specific to the particular operating system of a corresponding one of the N hosts; R is a positive integer; and N is greater than or equal to R. (Summary and column 2 lines 40-67)

35. Claims 40-48 do not teach or define any new limitations above claims 1-39 as mentioned above and are therefore rejected for similar reasons

Art Unit: 2157

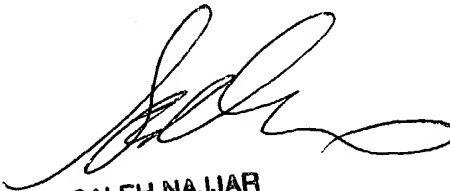
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramy M Osman whose telephone number is (703) 305-8050.

The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (703) 308-7562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RMO
September 19, 2004



SALEH NAJJAR
PRIMARY EXAMINER